INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	4
Argument	6
Conclusion	15

CITATIONS

Cases:

Doreau v. *Marshall*, 170 F. 2d 721	14
Mackenzie v. *Hare*, 239 U. S. 299	7
Perkins v. *Elg*, 307 U. S. 325	11, 14
Petition of Peterson, 33 F. Supp. 615	11
Petition of Prack, 60 F. 2d 171	9, 11
Varat, In re, 1 F. Supp. 898	11

Statutes:

Act of March 2, 1907 (34 Stat. 1228):	
Section 2	2, 7, 13
Section 3	7
Nationality Act of 1940 (54 Stat. 1137, 1168, 1172; 8 U. S. C. 708, 747, 801):	
Section 308	13
Section 347	8
Section 401	2, 3
Section 403	2, 3

Miscellaneous:

Hearings of the House Committee on Immigration and Naturalization, 76th Congress, Vol. 2, p. 25	3
House Committee Print, Codification of the Nationality Laws of the United States, Part 1, p. 6	13
39 Op. Atty. Gen. 474	11

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 709

ROSETTE SORGE SAVORGNAN, PETITIONER

v.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 86–92) is reported at 171 F. 2d 155. The opinion of the District Court (R. 61–67) is reported at 73 F. Supp. 109.

JURISDICTION

The judgment of the Court of Appeals was entered December 14, 1948 (R. 93), and a petition for rehearing was denied January 8, 1949 (R. 94). The petition for a writ of certiorari was

filed April 8, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

In 1940, petitioner voluntarily acquired Italian citizenship and took an oath of allegiance to Italy, while in the United States, and in July 1941 she departed with her Italian husband for Italy where she lived until 1945. The questions presented are:

1. Whether she lost her American citizenship under Section 2 of the Act of March 2, 1907.

2. Whether she lost her citizenship under Sections 401 and 403 of the Nationality Act of 1940 (effective January 13, 1941).

3. Whether, if the establishment of foreign residence is required to effect expatriation, the residence petitioner took up in Italy was sufficient.

4. Whether a subjective intent to renounce or surrender American citizenship is necessary to effect expatriation, in addition to the intentional and voluntary performance of the acts specified in the statutes as resulting in loss of nationality.

STATUTES INVOLVED

Section 2 of the Act of March 2, 1907 [1] (34 Stat. 1228) provided in relevant part as follows:

> any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in confor-

[1] Repealed by the Nationality Act of 1940, effective January 13, 1941. 54 Stat. 1172.

mity with its laws, or when he has taken an oath of allegiance to any foreign state.

Section 401 of the Nationality Act of 1940 (54 Stat. 1168; 8 U. S. C. 801) (effective January 13, 1941) provides in relevant part:

> A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person; * * *
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; * * *

Section 403 (a) of the same Act provides:

> (a) Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be expatriated, under this section [2] while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section [2] if and when the

[2] It is obvious from the context that the phrase "this section" refers to Section 401. In the bill as originally introduced this provision was incorporated in Section 401 (h). See Vol. 2, page 25, Hearings of the House Committee on Immigration and Naturalization, 76th Congress. In all probability, when it was subsequently made a part of Section 403 the desirability of changing "this section" to "Section 401" was overlooked.

national thereafter takes up a residence abroad.

STATEMENT

Petitioner was born in Reedsburg, Wisconsin, on May 2, 1915 (R. 9, 64). She resided continuously in the United States until July 15, 1941 (R. 10, 57, 65). She is a college graduate (R. 12). She met her husband, Allessandro Savorgnan, who was then Italian Vice Consul at St. Louis, Missouri, in the latter part of 1939 or early in 1940 (R. 13, 39, 58). He informed her that under Italian law she would have to acquire Italian citizenship before he could secure the required royal consent to their marriage (R. 10, 41–42). Accordingly, on March 28, 1940, petitioner made application for Italian citizenship (R. 13–17, 40, 48, 65), the application being in the Italian language which petitioner did not then understand (R. 13). Italian citizenship was granted to her by a royal decree law of August 23, 1940 (R. 44, 49). On November 23, 1940, she appeared at the Italian Consulate in Chicago and signed an oath, also in Italian, renouncing American citizenship and swearing allegiance to the King of Italy (Ex. 2, R. 49; R. 9, 18–21, 43–44, 58, 65). Petitioner and Mr. Savorgnan were married on December 26, 1940, in Waukon, Iowa (R. 9, 65).

On February 5, 1941, petitioner signed a United States Department of State form, entitled "Foreign Official Status Notification," stating that her nationality as of that date was Italian and that

her previous nationality had been "American, U. S. A." (R. 23, 50, 65).

In July 1941, when Italian diplomatic officials were required to leave the United States, petitioner and her husband embarked for Italy, she using an Italian diplomatic passport (R. 25, 26, 58, 65). She remained in Europe from the date of her arrival in Italy until her return to the United States in the latter part of 1945 (R. 10, 58, 59, 65). Petitioner never voted in Italy, but did vote in Wisconsin after her return to the United States in 1945 (R. 36).

After the entry of American troops into Rome in June 1944, petitioner identified herself to American military authorities and was thereafter employed by the Allied Control Commission until the autumn of 1945 (R. 11, 28, 59, 65–66). When the American Consulate was re-established in Rome in the latter part of 1944, she applied for registration as an American citizen (R. 11, 32, 66). By letter dated January 24, 1945, the Consulate advised her that her application had been approved by the State Department (R. 32–33, 55, 66). When, shortly thereafter, she made application for an American passport, she was informed that her application for registration as an American citizen was being reconsidered, and on or about June 1, 1945, she was further informed that the State Department was of the opinion that she had expatriated herself and that a passport would not be issued to her (R. 59, 66). On

November 1, 1945, after having received word that her mother was dying (R. 11, 34), petitioner reentered the United States on an Italian diplomatic passport (R. 11, 59, 66).

On February 12, 1946, petitioner filed an application in affidavit form with the Commissioner of Immigration and Naturalization for correction of the record of her admission to the United States to show her status as an American citizen at the time of her entry (R. 57–60). On June 28, 1946, her application was denied (R. 5).

Petitioner thereafter filed a petition in the United States District Court for the Western District of Wisconsin seeking a declaratory judgment declaring her to be an American citizen (R. 4–5). After a hearing, the petition was granted (R. 67). The District Court found as a fact that she did not knowingly renounce or relinquish her American citizenship and accordingly held that she was entitled to a judgment adjudging her to have been since her birth and to have remained a citizen of the United States.

The Court of Appeals unanimously reversed the District Court, holding that whether the Act of March 2, 1907, or the Nationality Act of 1940 applied, petitioner had expatriated herself.

ARGUMENT

The Court of Appeals correctly concluded, on several grounds, that petitioner was no longer an American citizen, and neither the decision nor

any of the separate reasons advanced for the holding warrant review here. The only matter discussed by the court as to which there is any substantial doubt concerns a controversial interpretation of the Act of March 2, 1907, which was repealed in 1940 and has no current vitality. The other bases of the holding are all clearly correct.

1. The court below properly held, in the first place, that petitioner was expatriated under the provisions of Section 2 of the 1907 Act (*supra*, pp. 2–3). She admittedly applied for Italian citizenship and became an Italian citizen in accordance with Italy's laws, and also signed an oath swearing allegiance to the King of Italy. *Supra*, p. 4.

a. On the authority of *Mackenzie* v. *Hare*, 239 U. S. 299, construing the cognate provisions of Section 3 of the 1907 statute, the Court of Appeals ruled "that a subsequent removal from the country was not necessary to effect the expatriation of a United States citizen who became naturalized in or took an oath of allegiance to a foreign state while residing within the United States" (R. 90). This conclusion is strongly supported by the rationale of the *Mackenzie* case as well as by the unqualified language of the Act, but, as the court recognized, it is contrary to the consistent administrative interpretation and to the accepted principles of expatriation prevailing at the time the 1907 statute was enacted (R. 89).

There is no occasion, however, for this Court to resolve the issue, since the instant decision also stands on several independent grounds, and the 1941 repeal of the statute makes the dispute almost wholly academic and historical at this time.[3]

b. Alternatively, the court held that if foreign residence was a necessary concomitant of expatriation under the 1907 Act, then expatriation resulted when petitioner took up residence in Italy in July 1941, after her Italian naturalization in 1940 (R. 90). *Supra*, p. 5. By July 1941, the 1907 provisions had been repealed (*supra*, p. 2, fn. 1), but the saving clause of the 1940 Act plainly sufficed to preserve the earlier legislation to cover petitioner's subsequent acquisition of foreign residence.[4]

c. (1) In this Court, for the first time, petitioner advances the further argument that the 1907 Act requires that the operative act of naturalization must take place in a foreign country, and since she was physically present in the United States at the time of her Italian naturalization,

[3] The Nationality Act of 1940 (effective January 1941) specifically requires the taking up of residence abroad to effect expatriation in these circumstances. *Supra*, pp. 3–4.

[4] The saving clause (Section 347) of the Nationality Act of 1940 provided (54 Stat. 1168, 8 U. S. C. 747) that nothing in the repeal provisions, *inter alia*, "shall be construed to affect * * * any act * * * done or existing, at the time this Act shall take effect; but as to all such * * * acts * * * the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect."

she could never be expatriated (Pet. 8, 19–20).[4] But the statutory words "naturalized in any foreign state", on which petitioner relies, obviously refer to the state which is the object of the new allegiance and do not connote the physical presence of the person naturalized on the foreign state's territory at the moment of change of allegiance. Otherwise, an American citizen who acquired foreign citizenship while within the United States, as petitioner admittedly did, and thereafter left the United States with intent never to return, would nevertheless continue indefinitely to remain an American citizen under our law. That plainly erroneous construction of the 1907 Act is at war with the clear purpose of Congress to expatriate Americans who voluntarily assume foreign nationality, and cannot be reconciled with the related provision of the 1940 Act which uses similar terms ("obtaining naturalization in a foreign state") while at the same time explicitly recognizing that the change of allegiance can occur within the United States. *Supra*, pp. 3–4.[5]

(2) Moreover, both statutes also specify the taking of a foreign oath of allegiance as result-

[4] In her brief in the Court of Appeals, petitioner stated that this was a point she might have proffered, but had not (p. 14).

[5] *Petition of Prack*, 60 F. 2d 171 (W. D. Pa.), cited by petitioner (Pet. 8, 20), does not hold, or even suggest, that the act of naturalization is ineffective if the applicant is within the United States.

ing in expatriation, without any indication that an oath taken in this country is ineffective—and petitioner signed such an oath in 1940. *Supra,* p. 4. Her present intimation that she did not know she was taking an oath of allegiance is unsupported by the record or by the trial court's findings. The District Court found no more than that petitioner had signed in Italian, a language she did not understand, an oath of allegiance to Italy (R. 65), and that no formalities attended the signing (R. 66); but there was no finding that she was unaware, or uninformed, of the nature of her oath, nor that the lack of formality nullified the oath. And it is highly improbable that a college-educated young women of 25 (R. 1, 12), who knew that she had applied for Italian citizenship and that the document she was signing was connected with acquiring the new nationality, did not understand that she was swearing to be faithful to "H. M. the King of Italy and Albania, Emperor of Ethiopia" (R. 20, 49). As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon and that no formalities were required under Italian law (R. 44–45, 49–50).

2. The second major ground of the Court of Appeals' decision was that petitioner was effectively expatriated under the Nationality Act of 1940 (R. 90–91). That statute provides for loss

of American nationality by "obtaining naturalization in a foreign state" or by "taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state", and if these acts or conditions occur within this country's territory expatriation results "if and when the national thereafter takes up a residence abroad." *Supra*, pp. 3–4. We believe the Court of Appeals was entirely correct in holding (R. 91) that naturalization is a status, and that once the act of naturalization is performed the resulting citizenship persists and is not terminated except by an act of denaturalization. Cf. *Perkins* v. *Elg*, 307 U. S. 325, 329. Consequently, petitioner's acquisition of Italian citizenship, even though occurring prior to the effective date of the 1940 Act, endowed her with a status fulfilling one of the specific conditions of the 1940 Act, which ripened into expatriation when she took up residence abroad, after the new Act became effective. Cf. *Petition of Prack*, 60 F. 2d 171, 172 (W. D. Pa.); *Petition of Peterson*, 33 F. Supp. 615, 616 (E. D. Wash.); *In re Varat*, 1 F. Supp. 898 (E. D. N. Y.); 39 Op. Atty. Gen. 474. The words of the statute do not require the first acquisition of foreign nationality to have taken place after its effective date, and a sensible view of its language and purpose requires that it cover the case of one who, like petitioner, had obtained naturalization as a citizen of a foreign state prior to the enactment of the Nationality Act, who had continued in

that status until and after the legislation's effective date, and who then took up foreign residence.*

3. Petitioner attempts to meet these arguments by denying that she ever took up residence abroad so as to consummate her expatriation (Pet. 10, 16). The District Court found that when she left in July 1941, she did not intend to establish a permanent residence abroad or to abandon her residence in the United States (R. 65), but it is likewise undisputed that she departed in order to reside with her husband who was a member of the Italian diplomatic service and was being compelled to leave this country, that her stay abroad was for an indefinite period of time, and that there then existed a serious deterioration of relations between Italy and the United States which verged upon and shortly thereafter materialized into war (R. 34–35, 65, 92). The Court of Appeals properly held that these facts show that petitioner took up a foreign residence within the conditions of the 1940 Act, as well as any similar requirement of the 1907 Act (R. 92). Section 104 of the 1940 statute (8 U. S. C. 504) defines place of residence, for expatriation purposes, as

* It should be noted that unless the 1940 Act's saving clause is held to preserve the 1907 Act sufficiently to cover this situation, as we argue above (*supra*, p. 8), or the 1940 Act itself governs, as we urge at this point, there would be no statutory provision for expatriation—assuming that foreign residence is essential—covering the situation in which naturalization preceded, and departure followed, the effective date of the 1940 legislation.

"place of general abode", and this term was intended to connote neither permanence of residence nor domicile, but principal dwelling place.[7] It is hardly doubtful that petitioner's principal dwelling place, after July 1941, was Italy, and that is enough for expatriation under either statute.

4. Finally, the Court of Appeals could not do otherwise, in our view, than reject petitioner's basic contention that a subjective intent to abandon American citizenship is essential to effect repatriation (R. 91–92). Petitioner admits, and the trial court found, that she applied for, desired, and obtained Italian nationality (R. 10, 13, 16, 21, 22, 50, 57, 65, 67), and it is this act of naturalization which Congress, in plainest words, has made decisive, both in the 1907 and in the 1940 statutes. That significant act in itself constitutes overt action gravely inconsistent with American citizenship, and it is immaterial that

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[7] See the note of the sponsors of the bill which eventuated in the Nationality Act (House Committee Print, Codification of the Nationality Laws of the United States, Part 1, p. 6):

"Definitions of 'residence' frequently include the element of intent as to the future place of abode. However, in Section 104 hereof no mention is made of intent, and the actual 'place of general abode' is the sole test for determining residence. The words 'place of general abode,' which are taken from the second paragraph of Section 2 of the Citizenship Act of March 2, 1907 (34 Stat. 1228), seem to speak for themselves. They relate to the principal dwelling place of a person."

In contrast, Section 308 of the Act (8 U. S. C. 708) uses the term "permanent residence".

the newly naturalized person may not intend to renounce allegiance to this country or to relinquish American citizenship, or that she may have mistakenly believed that it was possible to retain American nationality while acquiring a new citizenship.[5] These beliefs in no way alter the definitive character, or the wholly voluntary nature, of the acts which Congress has prescribed as sufficient to establish expatriation.

Unlike the plaintiff in *Perkins* v. *Elg*, 307 U. S. 325, whose asserted foreign nationality was derivatively acquired during minority by the naturalization of her parents in Sweden, petitioner is an adult who intentionally undertook to acquire Italian nationality for reasons of her own, and then went to live in that country. The most that can be said is that while her acts were conscious, deliberate, and voluntary, their consequences were unexpected and repugnant. Those consequences, however, are imposed by statute upon the acts which petitioner performed, and these acts do not depend for their effectiveness upon her knowledge of, or willingness to assume, the necessary consequences.[6]

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[5] But see petitioner's statement to the Department of State, in February 1941, that her "present nationality" was "Italian" and her "previous nationality" was "American, U. S. A." (R. 50).

[6] There is, of course, no conflict—as the *amicus curiae* asserts (Br. pp. 6–9)—with *Doreau* v. *Marshall*, 170 F. 2d 721 (C. A. 3), which held that a foreign naturalization impelled by "true duress" would not constitute expatriation. Here, there is no suggestion of duress, and the Third Circuit care-

CONCLUSION

The decision below is correct, and stands upon several valid grounds, none of which warrant review here. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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MAY 1949.

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fully distinguished "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency." 170 F. 2d 724.

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